

EXHIBIT 4

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF OHIO
3 EASTERN DIVISION

4 IN RE: NATIONAL) MDL No. 2804
5 PRESCRIPTION OPIATE)
6 LITIGATION) Case No.
7) 1:17-MD-2804
8)
9 THIS DOCUMENT RELATES TO) Hon. Dan A.
10 ALL CASES) Polster
11)

12 Monday, May 13, 2019
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15

16 HIGHLY CONFIDENTIAL - SUBJECT TO FURTHER
17 CONFIDENTIALITY REVIEW
18
19
20

21 Videotaped Deposition of JAMES E.
22 RAFALSKI, held at Weitz & Luxenburg PC, 3011
23 West Grand Avenue, Suite 2150, Detroit,
24 Michigan, commencing at 9:20 a.m., on the
25 above date, before Michael E. Miller, Fellow
of the Academy of Professional Reporters,
Registered Diplomate Reporter, Certified
Realtime Reporter and Notary Public.

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1 PROCEEDINGS

2 (May 13, 2019 at 9:20 a.m.)

3 (The following proceedings were
4 conducted off the videotaped record.)

5 MR. NICHOLAS: Before we get
6 started, Mr. Fuller, counsel for
7 plaintiffs, just handed me a Touhy
8 authorization letter that's dated
9 April 12th of 2019. This is the first
10 we've seen it. I'm going to proceed
11 with the deposition.

12 I will reserve our right to
13 come back if there's anything about
14 our receipt of this or something in
15 the letter that requires us to come
16 back and ask more questions since
17 we're seeing it for the first time,
18 and that's what I wanted to say.

19 MR. FULLER: Sure. And we'll
20 put on the record that as everyone
21 here knows, Mr. Rafalski is a former
22 DEA agent, therefore Touhy
23 authorization would have to be
24 obtained, similarly to the 20 former
25 DEA employees that the defendants

1 requested Touhy clearance on before
2 disclosing some of their expert
3 reports.

4 I've been asked to remind that
5 the DEA wasn't noticed of this depo,
6 even though he's a former agent, by
7 the defense. They weren't necessarily
8 happy with that. They asked for
9 everybody to comply with the Touhy
10 authorization, which, similar to the
11 other authorizations in this case,
12 allows the witness to testify to --
13 well, a little different with Rafalski
14 because he's reviewed a lot of the
15 documents produced by all the
16 defendants, testified from the
17 discovery produced in this case and
18 anything nonprivileged as set out in
19 the Touhy authorization.

20 MR. NICHOLAS: Okay. There's
21 too many things to argue about in this
22 case to get into a big argument --

23 MR. FULLER: Sure, sure.

24 MR. NICHOLAS: -- but I will
25 just say that he's your retained

1 expert. You've had this letter for a
2 month; you're just giving it to us
3 today.

4 So I don't get the part where
5 the DEA -- if the DEA is unhappy,
6 maybe they're unhappy with you guys,
7 but they shouldn't be unhappy with us
8 because he's your person.

9 But like I said, we don't need
10 to spend any more time on it.

11 THE VIDEOGRAPHER: Ready to
12 begin?

13 MR. NICHOLAS: I am.

14 (Whereupon the videotaped
15 record begins.)

16 THE VIDEOGRAPHER: We're now on
17 the record. My name is David Lane,
18 videographer for Golkow Litigation
19 Services. Today's date is May 13th,
20 2019. Our time is 9:22 a.m.

21 This deposition is taking place
22 in Detroit, Michigan in the matter of
23 National Prescription Opiate
24 Litigation. Our deponent today is
25 James E. Rafalski.

1 Counsel will be noted on the
2 stenographic record. Our court
3 reporter is Mike Miller, and he will
4 now swear in the witness.

5 JAMES E. RAFALSKI,
6 having been duly sworn,
7 testified as follows:

8 EXAMINATION

9 BY MR. NICHOLAS:

10 Q. Good morning, Mr. Rafalski. My
11 name is Bob Nicholas. I represent
12 AmerisourceBergen. I'm here to ask you
13 questions in connection with the MDL opioid
14 litigation and specifically the Track 1 and
15 Track 2 -- just the Track 1 cases that are
16 currently scheduled to go to trial in
17 October.

18 A. Good morning, sir.

19 Q. Good morning.

20 You are here as a retained
21 expert on behalf of the Track 1 plaintiffs in
22 this case; is that right?

23 A. Yes, sir, I am.

24 Q. Okay. And you are being paid
25 for your time?

1 A. I think so.

2 Q. Okay.

3 A. Maybe a few more, but I did not
4 read the full deposition.

5 Q. Okay. Thank you for all that.

6 A. Yep, you're welcome, sir.

7 Q. I apologize for taking so much
8 time on this background stuff, but someone's
9 got to do it.

10 A. I understand.

11 Q. Are you familiar with the
12 regulation that discusses suspicious orders,
13 regulation 1301.74, subpart (b)?

14 A. Yes, sir.

15 Q. All right. And does that
16 regulation define suspicious orders?

17 A. I think the regulation itself
18 is a broad regulation and, I think, for a
19 good purpose. I think it gives some guidance
20 on a suspicious order, but I think the actual
21 full definition is up to the registrant,
22 depending on a lot of factors; the scope of
23 their business and the scope of those
24 customers that receive products from them.

25 So I think -- I know there's a

1 lot of criticism about the -- or there's some
2 criticism about the regulation. I think it's
3 a perfect regulation for industry to adhere a
4 specific program to.

5 Q. The regulation defines
6 suspicious orders as orders of unusual size,
7 orders deviating substantially from a normal
8 pattern, and orders of unusual frequency; is
9 that correct?

10 A. Well, that is what the
11 regulation says, but -- but I'm not so sure I
12 agree if you're saying the word "defines"
13 says that suspicious orders could only be
14 those things.

15 I think that's up to the
16 registrant to -- because there could be other
17 factors where a suspicious order could be
18 identified other than those three parameters.

19 Q. Does the order tell the
20 registrant what is meant by an order of
21 unusual size?

22 MR. FULLER: Form.

23 A. No, I think that's up for the
24 registrant to define based on their
25 application of their maintenance of effective

1 controls. You know, that question has come
2 up before. I think the important thing first
3 for a company or a registrant is define what
4 "usual" is, and that would be their due
5 diligence and their maintenance of effective
6 controls.

7 Many companies focus on trying
8 to define an unusual order when they don't
9 sufficiently understand what a usual order is
10 in regards to what kind of business they're
11 operating and the scope of their business.

12 MR. FULLER: Bob, and not to
13 pick on your flow, but your last
14 question was does the order tell the
15 registrant.

16 MR. NICHOLAS: Oh, my mistake.

17 MR. FULLER: That's why I
18 objected.

19 MR. NICHOLAS: I appreciate it.
20 Well, then I appreciate it.

21 MR. FULLER: But Rafalski still
22 answered it.

23 MR. NICHOLAS: That's fine.

24 THE WITNESS: I thought I had
25 to.

1 A. I think I stated that in my
2 previous answer. Of this regulation or any
3 regulation?

4 Q. This one.

5 A. No, I think the regulation is
6 fine exactly as it stands.

7 Q. And would you continue to say
8 that if you understood that both industry and
9 people within the DEA have expressed
10 confusion about the meaning of the language?

11 A. Well, I'm only speaking from my
12 experience and conducting my investigations
13 in dealing with registrants, and I guess
14 sometimes when I look at that regulation and
15 if I thought I had the role of being a
16 distributor or a manufacturer, I would want
17 it to be as nonrestrictive and broad as
18 possible to design the best system based on
19 the type of company that I had and the scope
20 of my business model and who my customers
21 were.

22 So I think changing the
23 regulation is a -- I hope that if it is
24 changed, that it takes that into
25 consideration because I don't really think

1 there's a one-size-fits-all.

2 I think there's some
3 expectations of the regulation, but I hope
4 that my experience, again -- I keep harkening
5 back -- is that industry has always been
6 asking for just what is a system and design
7 it. And that's not possible because there's
8 so many different types of businesses and
9 types of customers. It's got to be tailored
10 to the company's business.

11 Q. And the customers change, the
12 customers' businesses change, the hospitals
13 and the doctors change. All that stuff is
14 constantly changing, correct?

15 A. That's exactly my point.

16 Q. Yeah.

17 A. It's never a static industry.
18 The types of diversion change, the types of
19 drugs change, and to make a regulation that
20 would be very restrictive would probably
21 cause diversion.

22 MR. NICHOLAS: We'll just do
23 one more segment here and then we can
24 break for lunch.

25 MR. FULLER: Sure.

1 CERTIFICATE

2 I, MICHAEL E. MILLER, Fellow of
3 the Academy of Professional Reporters,
4 Registered Diplomate Reporter, Certified
5 Realtime Reporter, Certified Court Reporter
6 and Notary Public, do hereby certify that
7 prior to the commencement of the examination,
8 JAMES E. RAFALSKI was duly sworn by me to
9 testify to the truth, the whole truth and
10 nothing but the truth.

11 I DO FURTHER CERTIFY that the
12 foregoing is a verbatim transcript of the
13 testimony as taken stenographically by and
14 before me at the time, place and on the date
15 hereinbefore set forth, to the best of my
16 ability.

17 I DO FURTHER CERTIFY that pursuant
18 to FRCP Rule 30, signature of the witness was
19 not requested by the witness or other party
20 before the conclusion of the deposition.

21 I DO FURTHER CERTIFY that I am
22 neither a relative nor employee nor attorney
23 nor counsel of any of the parties to this
24 action, and that I am neither a relative nor
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that I am not financially interested in the
action.



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My Commission Expires: 7/9/2020

Dated: May 15, 2019